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west virginia department of environmental protection

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Division of Mining and Reclamation  
601 57<sup>th</sup> Street, SE  
Charleston, WV 25304  
Phone: 304-926-0499  
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Joe Manchin III, Governor  
Randy C. Huffman, Cabinet Secretary  
dep.wv.gov

March 8, 2010

**Certified Return Receipt**

Independence Coal Company Inc.  
782 Robinson Creek Road  
Madison, WV 25130

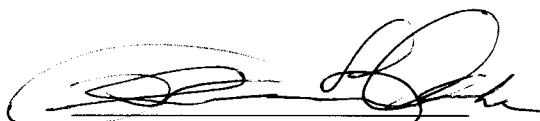
Re: Application for Modification No. 23  
Of NPDES Permit No. WV1016890  
Seeking Extension of a Compliance Schedule  
For Selenium

Dear Permittee:

This letter is to advise you of the West Virginia Department of Environmental Protection's decision to DENY your application for Modification No. 23 of NPDES Permit No. WV1016890, seeking an extension of the compliance schedule for selenium that is part of this permit. The authorization you previously received to advertise a draft permit granting this modification was given prematurely, before a decision had been made by the WVDEP to proceed on this course of action.

The WVDEP finds that "good cause" to grant an extension of the existing selenium compliance schedule, as required by 47 C.S.R. § 30 - 8.2.c.2.D, does not exist in the case of this application and this permit. During the time of the existing compliance schedule, the effort you have taken on the ground on this permit has been limited to the implementation of a pilot scale treatment project. This pilot scale treatment project was initiated well after the deadline for doing so in your existing compliance schedule and was discontinued after a short time. There has been no other attempt to treat the effluent at any outlet requiring treatment. By your failure to undertake anything more than token action to comply during the existing compliance schedule, the WVDEP cannot conclude that events over which you have little or no control have prevented you from complying.

You may appeal this decision to the Environmental Quality Board in accordance with West Virginia Code §§ 22B-1-1 through -12.

  
Thomas L. Clarke, Director  
Division of Mining and Reclamation

cc: Environmental Inspector  
Regional Office File  
Headquarters NPDES File

Promoting a healthy environment.

**PLAINTIFFS' EXHIBIT 4**